

SENATE BILL No. 373

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-5-1-11; IC 24-4.5-7-102; IC 24-11.

Synopsis: Funding of lawsuits. Establishes a procedure by which a company may provide funding to the plaintiff in an action in exchange for the contingent right to receive a part of the potential proceeds of the action. Requires a company that offers funding to plaintiffs to register with the secretary of state.

Effective: July 1, 2015.

Head

January 12, 2015, read first time and referred to Committee on Judiciary.



First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 373

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-5-1-11, AS AMENDED BY P.L.92-2013,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 11. The secretary of state may adopt and enforce
4 rules under IC 4-22-2 that are necessary to carry out IC 9-32 **and**
5 **IC 24-11.**

6 SECTION 2. IC 24-4.5-7-102, AS AMENDED BY P.L.137-2014,
7 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2015]: Sec. 102. (1) Except as otherwise provided, all
9 provisions of this article applying to consumer loans, including
10 IC 24-4.5-3-502.2, apply to small loans, as defined in this chapter.

11 (2) This chapter applies to:

12 (a) a lender or to any person who facilitates, enables, or acts as a
13 conduit for any person who is or may be exempt from licensing
14 under IC 24-4.5-3-502;

15 (b) a bank, savings association, credit union, or other state or
16 federally regulated financial institution except those that are



specifically exempt regarding limitations on interest rates and fees; or

(c) a person, if the department determines that a transaction is:

(i) in substance a disguised loan; or

(ii) the application of subterfuge for the purpose of avoiding this chapter.

(3) A loan that:

(a) does not qualify as a small loan under section 104 of this chapter;

(b) is for a term shorter than that specified in section 401(1) of this chapter; or

(c) is made in violation of section 201, 401, 402, 404, or 410 of this chapter;

is subject to this article. The department may conform the finance charge for a loan described in this subsection to the limitations set forth in IC 24-4.5-3-508.

(4) This chapter does not apply to civil justice funding (as defined in IC 24-11-1-1(3)) or a civil justice funding company (as defined in IC 24-11-1-1(4)).

SECTION 3. IC 24-11 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

ARTICLE 11. CIVIL JUSTICE FUNDING

Chapter 1. Definitions

Sec. 1. The following definitions apply throughout this article:

(1) "Advertise" means publishing or disseminating any written, electronic, or printed communication, or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of inducing a consumer to enter into a civil justice funding.

(2) "Charges" means the amount of money to be paid to a civil justice funding company by or on behalf of a consumer, above the funded amount provided by or on behalf of the company to a consumer. The term includes all administrative, origination, underwriting, and other fees no matter how denominated.

(3) "Civil justice funding" means a nonrecourse transaction in which a civil justice funding company purchases and a consumer assigns to the company a contingent right to receive



an amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the consumer's legal claim.

(4) "Civil justice funding company" or "company" means a person or entity that enters into a civil justice funding with a consumer. This term does not include the following:

(A) An immediate family member of the consumer.

(B) A bank, lender, financing entity, or other special purpose entity:

(i) that provides financing to a civil justice funding company; or

(ii) to which a civil justice funding company grants a security interest or transfers any rights or interest in a civil justice funding.

(C) An attorney or accountant who provides services to a consumer.

(5) "Consumer" means a natural person who has a pending legal claim and who:

(A) resides in Indiana; or

(B) has a legal claim in Indiana.

(6) "Funded amount" means the amount of money provided to, or on behalf of, the consumer in the civil justice funding. The term excludes charges.

(7) "Funding date" means the date on which the funded amount is transferred to the consumer by the civil justice funding company, by:

(A) personal delivery, wire, Automated Clearing House (ACH), or other electronic means; or

(B) insured, certified, or registered United States mail.

(8) "Immediate family member" means a:

(A) parent;

(B) sibling;

(C) child;

(D) spouse;

(E) grandparent; or

(F) grandchild.

(9) "Legal claim" means a bona fide civil claim or cause of action.

(10) "Resolution date" means the date the amount funded to the consumer, plus the agreed upon charges, are delivered to the civil justice funding company.

Chapter 2. Contract Requirements



1 **Sec. 1. Every civil justice funding shall meet the following**
 2 **requirements:**

3 (1) The contract shall be completely filled in when presented
 4 to the consumer for signature.

5 (2) The contract must contain, in bold and boxed type, a right
 6 of rescission, allowing the consumer to cancel the contract
 7 without penalty or further obligation if, not later than five (5)
 8 business days after the funding date, the consumer either:

9 (A) returns to the civil justice funding company the full
 10 amount of the disbursed funds by delivering the company's
 11 uncashed check to the company's office in person; or

12 (B) mails, by insured, certified, or registered United States
 13 mail, to the address specified in the contract, a notice of
 14 cancellation and includes in the mailing a return of the full
 15 amount of disbursed funds in the form of the company's
 16 uncashed check or a registered or certified check or money
 17 order.

18 (3) The contract must contain the initials of the consumer on
 19 each page.

20 **Sec. 2. The contract shall contain a verified statement by the**
 21 **attorney retained by the consumer in the legal claim stating all of**
 22 **the following:**

23 (1) To the best of the attorney's knowledge, all the costs and
 24 charges relating to the civil justice funding have been
 25 disclosed to the consumer.

26 (2) The attorney is being paid on a contingency basis under a
 27 written fee agreement.

28 (3) All proceeds of the legal claim will be disbursed via either
 29 the attorney's trust account or a settlement fund established
 30 to receive the proceeds of the legal claim on behalf of the
 31 consumer.

32 (4) The attorney is following the written instructions of the
 33 consumer with regard to the civil justice funding.

34 (5) The attorney has not received a referral fee or other
 35 consideration from the civil justice funding company in
 36 connection with the civil justice funding, nor will the attorney
 37 receive a referral fee or other consideration in the future.

38 **Sec. 3. A contract that does not contain the verified statement**
 39 **described in section 2 of this chapter is void.**

40 **Chapter 3. Civil Justice Funding Company Prohibitions**

41 **Sec. 1. A civil justice funding company may not do any of the**
 42 **following:**



(1) Pay or offer to pay a commission, referral fee, or other form of consideration to any attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees, for referring a consumer to the company.

(2) Accept a commission, referral fee, rebate, or other form of consideration from an attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees.

(3) Intentionally advertise materially false or misleading information regarding the civil justice funding company's products or services.

(4) Refer, in furtherance of an initial legal funding, a customer or potential customer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees. However, if a customer needs legal representation, the company may refer the customer to a local or state bar association referral service.

(5) Fail to promptly supply a copy of the executed contract to the attorney for the consumer.

(6) Knowingly provide funding to a consumer who has previously assigned or sold a part of the consumer's right to proceeds from the consumer's legal claim without first making payment to or purchasing a prior unsatisfied civil justice funding company's entire funded amount and contracted charges, unless a lesser amount is otherwise agreed to in writing by the civil justice funding company. However, multiple companies may agree to provide funding to a consumer simultaneously if the consumer and the consumer's attorney consent to the arrangement in writing.

(7) Receive any right to make any decision with respect to the conduct of the underlying legal claim or any settlement or resolution of the claim, or make any decision with respect to the conduct of the underlying legal claim or any settlement or resolution of the claim. The right to make these decisions remains solely with the consumer and the attorney in the legal claim.

(8) Knowingly pay or offer to pay for court costs, filing fees, or attorney's fees either during or after the resolution of the legal claim, using funds from the civil justice funding transaction.

Chapter 4. Contracted Amounts

Sec. 1. A civil justice funding company shall require the contracted amount payable to the company to be set as a



predetermined amount based upon intervals of time from the funding date through the resolution date and not be determined as a percentage of the recovery from the legal claim.

Chapter 5. Disclosures

Sec. 1. All civil justice funding contracts must contain the disclosures specified in this section, which are material terms of the contract. Unless otherwise specified, the disclosures must be in at least twelve (12) point bold font and be placed clearly and conspicuously within the contract. The following disclosures are required:

(1) On the front page, under appropriate headings, language specifying:

(A) the funded amount to be paid to the consumer by the civil justice funding company;

(B) an itemization of one (1) time charges;

(C) the total amount to be assigned by the consumer to the company, including the funded amount and all charges; and

(D) a payment schedule including the funded amount and all charges, listing all dates and the amount due at the end of each one hundred eighty (180) day period, from the funding date until the date on which the maximum amount due to the company by the consumer occurs.

(2) A notice within the body of the contract stating the following: "Consumer's Right to Cancellation: You may cancel this contract without penalty or further obligation within five (5) business days after the funding date if you either:

(A) return to the civil justice funding company the full amount of the disbursed funds by delivering the company's uncashed check to the company's office in person; or

(B) mail, by insured, certified, or registered United States mail, to the company at the address specified in the contract, a notice of cancellation and include in the mailing a return of the full amount of disbursed funds in the form of the company's uncashed check or a registered or certified check or money order."

(3) A notice informing the consumer that the civil justice funding company has no role in deciding whether, when, and how much the legal claim is settled for. However, the consumer and consumer's attorney must notify the company of the outcome of the legal claim by settlement or adjudication



prior to the resolution date. The company may seek updated information about the status of the legal claim but in no event may the company interfere with the independent professional judgment of the attorney in the handling of the legal claim or any settlement.

(4) Within the body of the contract, in all capital letters in at least a twelve (12) point bold font contained within a box the following: "THE FUNDED AMOUNT AND AGREED UPON CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE [INSERT NAME OF THE CIVIL JUSTICE FUNDING COMPANY] ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU OR YOUR ATTORNEY HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST THE CIVIL JUSTICE FUNDING COMPANY.".

(5) Located immediately above the place on the contract where the consumer's signature is required, in twelve (12) point font the following: "Do not sign this contract before you read it completely or if the contract contains any blank spaces. You are entitled to a completely filled in copy of the contract. Before you sign this contract, you should obtain the advice of an attorney. Depending on the circumstances, you may want to consult a tax, public or private benefits planning, or financial professional. You acknowledge that your attorney in the legal claim has provided no tax, public or private benefit planning, or financial advice regarding this transaction.".

Chapter 6. Violations

Sec. 1. This article does not restrict the exercise of powers or the performance of the duties of the attorney general.

Sec. 2. If a court with jurisdiction determines that a civil justice funding company has intentionally violated the provisions of this article with regard to a specific civil justice funding, the civil justice funding company is only entitled to recover the funded amount provided to the consumer in that civil justice funding and is not entitled to any additional charges.

Chapter 7. Assignability

Sec. 1. A consumer may assign the contingent right to receive an



1 amount of the potential proceeds of a legal claim.

2 **Sec. 2.** This article may not be construed to cause any civil
3 justice funding transaction that complies with the requirements of
4 this article to be considered a loan or to be otherwise subject to any
5 other provisions of Indiana law governing loans. Notwithstanding
6 any other law, a civil justice funding transaction that complies with
7 this article is not subject to any other statutory or regulatory
8 provisions governing loans or investment contracts. To the extent
9 that this article conflicts with any other law, this article supersedes
10 the other law for the purposes of regulating civil justice fundings.

11 **Sec. 3.** Only attorney's liens related to the legal claim, or
12 Medicare or other statutory liens related to the legal claim, take
13 priority over a lien of the civil justice funding company. All other
14 liens take priority by normal operation of law.

15 **Chapter 8. Attorney Prohibitions**

16 **Sec. 1.** An attorney or law firm retained by the consumer in the
17 legal claim may not have a financial interest in the civil justice
18 funding company offering civil justice funding to that consumer.
19 Additionally, any attorney who has referred the consumer to the
20 consumer's retained attorney may not have a financial interest in
21 the civil justice funding company offering civil justice funding to
22 that consumer.

23 **Chapter 9. Privileged Communication**

24 **Sec. 1.** No communication between the consumer's attorney in
25 the legal claim and the civil justice funding company with respect
26 to the civil justice funding limits, waives, or abrogates the scope or
27 nature of any statutory or common law privilege, including the
28 work product doctrine and the attorney client privilege.

29 **Chapter 10. Registration**

30 **Sec. 1.** A civil justice funding company may not engage in the
31 business of civil justice funding unless the company has registered
32 with the secretary of state in accordance with this chapter.

33 **Sec. 2.** A civil justice funding company application and
34 registration form must be filed in the manner prescribed by the
35 secretary of state and must contain the information the secretary
36 of state requires to make an evaluation of the character and fitness
37 of the applicant company. The initial application must be
38 accompanied by a five hundred dollar (\$500) fee. A renewal
39 registration must include a two hundred dollar (\$200) fee. A
40 registration must be renewed every two (2) years and expires on
41 September 30.

42 **Sec. 3.** A certificate of registration may not be issued unless the



1 secretary of state, upon investigation, finds that the character and
 2 fitness of the applicant company, and of the officers and directors
 3 of the company, are sufficient to warrant belief that the business
 4 will be operated honestly and fairly.

5 Sec. 4. Every registrant shall also, at the time of filing an
 6 application, file with the secretary of state, if required by the
 7 secretary of state, a bond satisfactory to the secretary of state in an
 8 amount not to exceed fifty thousand dollars (\$50,000). Instead of
 9 the bond, at the option of the registrant, the registrant may post an
 10 irrevocable letter of credit. The terms of the bond must run
 11 concurrently with the period of time during which the registration
 12 will be in effect. The bond must provide that the registrant will
 13 faithfully follow the law.

14 Sec. 5. (a) Upon written request, the applicant is entitled to a
 15 hearing on the question of the applicant's qualifications for a
 16 registration if:

17 (1) the secretary of state has notified the applicant in writing
 18 that the application has been denied; or

19 (2) the secretary of state has not issued a registration within
 20 sixty (60) days after the application for the registration was
 21 filed.

22 (b) A request for a hearing may not be made more than fifteen
 23 (15) days after the secretary of state has mailed a written notice to
 24 the applicant that the application has been denied and described in
 25 substance the secretary of state's findings supporting denial of the
 26 application.

27 Sec. 6. A civil justice funding company that registered with the
 28 secretary of state after January 1, 2015, and before July 1, 2015,
 29 may engage in civil justice funding while the company's
 30 registration is waiting approval by the secretary of state. Any
 31 funding agreement entered into before January 1, 2015, is not
 32 subject to this article.

33 Sec. 7. A civil justice funding company may not use any form of
 34 civil justice funding contract in Indiana unless the contract has
 35 been filed with the secretary of state in accordance with the filing
 36 procedures set forth by the secretary of state.

37 Sec. 8. Fees collected under this chapter shall be deposited in the
 38 electronic and enhanced access fund established by IC 4-5-10-5.

39 Sec. 9. The secretary of state may adopt rules under IC 4-22-2
 40 to implement this article.

